

Case 1:07-cv-00096-LG-JMR

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
3 SOUTHERN DIVISION

4 MICHAEL SHANE STEPHENS,  
5 Plaintiff,

6 VERSUS CIVIL ACTION NO: 1:07cv96LG-JMR

7 HARRISON COUNTY, MISSISSIPPI;  
8 SHERIFF GEORGE H. PAYNE, JR.;  
9 AND UNKNOWN OFFICERS IN THEIR  
10 INDIVIDUAL AND OFFICIAL  
CAPACITY,  
Defendants.

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12 DEPOSITION OF JAMES B. ESPOSITO

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14 Taken at the offices of Gex & Artigues,  
15 833 Highway 90, Bay St. Louis,  
Mississippi, on Tuesday, April 1, 2008,  
beginning at 2:30 p.m.

16

17 APPEARANCES:

18

19 GLADYS LOFTON, ESQUIRE  
20 Law Office of LaQuetta Golden  
21 12311 Ashley Drive, Suite D  
Gulfport, Mississippi 39503  
ATTORNEY FOR PLAINTIFF

22 JOE C. GEWIN, ESQUIRE  
23 Dukes, Dukes, Keating & Faneca, P.A.  
24 2909 13th Street, Sixth Floor  
Gulfport, Mississippi 39501  
ATTORNEY FOR SHERIFF GEORGE PAYNE

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1 APPEARANCES: (Continued)

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3 Gex & Artigues  
4 833 Highway 90  
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Bay St. Louis, Mississippi 39520  
ATTORNEY FOR JAMES ESPOSITO

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1                   **T-A-B-L-E O-F C-O-N-T-E-N-T-S**

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## **STIPULATION**

2 It is hereby stipulated and agreed by and  
3 between the parties hereto, through their  
4 respective attorneys of record, that this  
5 deposition may be taken at the time and place  
6 hereinbefore set forth, by F. Dusty Burdine, Court  
7 Reporter and Notary Public, pursuant to the  
8 Federal Rules of Civil Procedure, as amended;

9 That the formality of READING AND SIGNING is  
10 specifically NOT WAIVED;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

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1 MR. GEWIN:

2 Before I ask any questions, for the  
3 record, this deposition is taken by agreement of  
4 the parties and pursuant to the Federal Rules of  
5 Civil Procedure.

6 Do you agree to reserve the objections,  
7 except as to the form of the question and  
8 responsiveness of the answer?

9 MS. LOFTON:

10 Correct.

11 JAMES ESPOSITO

12 having been first duly sworn, was examined  
13 and testified as follows:

14 EXAMINATION

15 BY MR. GEWIN:

16 Q. Would you state your name for the  
17 record, please.

18 A. James Esposito.

19 Q. What is your position now?

20 A. Lieutenant within our department,  
21 narcotics.

22 Q. What department now?

23 A. Hancock County Sheriff's Office.

24 Q. How long have you been with the Hancock  
25 County Sheriff's Office?

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1 A. Sixteen years.

2 Q. All right. We're here on an incident  
3 that occurred on February 5th, 2004. Do you  
4 recall that event, the car chase?

5 A. Yes, sir.

6 Q. What was your job duty on February 5th,  
7 2004?

8 A. At that time, I would have been, I  
9 think, supervisor on shift.

10 Q. Were you on patrol that evening?

11 A. Yes, sir.

12 Q. Do you recall getting a call for  
13 assistance from any other police office?

14 A. Harrison County was in pursuit of a  
15 vehicle.

16 Q. Okay. Will you just kind of lead us  
17 through what happened? My understanding is this  
18 was the evening around 11:00 p.m., February 5th,  
19 2004; is that your understanding?

20 A. Yes, sir.

21 Q. Okay. Can you just kind of lead us  
22 through where you picked up and got the call for  
23 assistance, where you were located and what you  
24 saw?

25 A. I don't recall exactly where I was

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1 sitting, but I do know that I did take lead car  
2 and was in pursuit of the suspect vehicle.

3 Q. Do you know what the vehicle driver was  
4 first lit up for?

5 A. All I knew is that it was a stolen  
6 vehicle, that they were in pursuit of a stolen  
7 vehicle.

8 Q. Okay. So were you the immediate pursuit  
9 directly behind the fleeing vehicle?

10 A. As it came into Hancock County.

11 Q. Okay. How long did you chase it through  
12 Hancock County, how much time or how many miles,  
13 approximately?

14 A. Let's see. At least 12 miles.

15 Q. What speeds did the driver in front of  
16 you approach as you chased him?

17 A. I don't recall.

18 Q. Was it a fairly high-speed chase?

19 A. Yes, sir. Over the speed limit.

20 Q. Was there any other vehicles following  
21 you in this parade of vehicles?

22 A. Yes, sir.

23 Q. Who all else was in that line of cars  
24 behind you?

25 A. It would have been Hancock County

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1           deputies and Harrison County deputies.

2           Q.     Do you know the names of the Hancock  
3         County deputy car that would have been involved in  
4         the pursuit with you in another vehicle?

5           A.     Yes, sir.

6           Q.     Who was that?

7           A.     Deputy Danny Gilkerson.

8           Q.     And was Mr. Gilkerson in his vehicle by  
9         himself?

10          A.     Yes, sir.

11          Q.     You didn't have any passengers either?

12          A.     No, sir.

13          Q.     Okay. Kind of tell us what happened as  
14         the chase progressed in Hancock County.

15          A.     As we approached the two-mile marker --  
16         and I'm not sure which deputy did it, but we spike  
17         stripped the vehicle. After that, the vehicle  
18         moved down to the right -- to the right side of  
19         the median. I followed. And as we came to a  
20         rest -- as he came to a rest, I stopped. And when  
21         I went to try to stop, I slid into his vehicle,  
22         pressing the door forward on his vehicle.

23          Q.     When you say "median," do you mean the  
24         right-hand shoulder?

25          A.     Well, it's kind of a median, I guess.

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1 It's not just right off the shoulder. It's all  
2 the way down into the ditch and up by the wood  
3 line.

4 Q. Okay. We're not talking about the  
5 median between the roads?

6 A. No.

7 Q. We're talking --

8 A. To the right.

9 Q. -- right-hand shoulder?

10 A. Yes.

11 Q. Okay. And as you hit the brakes, I  
12 understand you skidded, and you skidded kind of  
13 and side swiped the driver in front of you?

14 A. Correct.

15 Q. What happened the moment you impacted?

16 A. As he opened his door and I hit his  
17 door, he came out and went over the front of my  
18 vehicle.

19 Q. Okay. And then what happened?

20 A. Then I got out of my vehicle. And as I  
21 went to the rear part of the vehicle, he was gone.  
22 I then followed him into the woods to look for  
23 him.

24 Q. Did anyone go with you to help you look?

25 A. No. I don't remember. I was by myself.

1 Q. Okay. And then what happened?

2 A. As we went into the woods, you couldn't  
3 see, so I grabbed my flashlight and was looking  
4 around. And I found him. He was trying to  
5 negotiate a fence that was about 15 yards inside  
6 the wood line.

7 Q. What kind of fence?

8 A. It's a mixed barbed wire. Like a -- I  
9 don't know what you would call that.

10 Q. A hog wire?

11 A. Yeah. Like you would find on a farm,  
12 the square stuff with the barbed wire across the  
13 top of it.

14 Q. And when you say "we," would that  
15 include the driver of the fleeing vehicle and  
16 yourself?

17 A. Correct.

18 Q. And describe for us when you put the  
19 flashlight on the person, what did you see?

20 A. I saw him trying to fight to get over  
21 the fence.

22 Q. Was he halfway over it or --

23 A. Yes, sir.

24 Q. -- tangled in it or what?

25 A. Yes, sir. He was -- he was trying to

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11

1 get over the top of it.

2 Q. He didn't have a flashlight, did he?

3 A. No, sir.

4 Q. Did he appear to have been harmed by the  
5 barbed wire fence; could you tell at that time?

6 A. All I know is that he was -- he was  
7 wrapped up in the fence trying to get over it. He  
8 was trying to get through it.

9 Q. What happened as you approached him?  
10 Did you identify yourself?

11 A. Yeah. As I saw him, I gave out my K-9  
12 warnings. And as I did, he went over the fence.  
13 He tried to get back up. I yelled at him again my  
14 K-9 warnings, and he gave up.

15 Q. When you say your K-9 warnings, did you  
16 have a dog with you?

17 A. No. I am a K-9 officer, but my dog was  
18 sick and I did not have him with me.

19 Q. But you said "sick him" anyway; is that  
20 right?

21 A. I told him to stop or I was going to  
22 send my K-9.

23 Q. So it worked just as well as if you had  
24 a dog with you, right?

25 A. Yes, sir.